

REMARKS

Entry of the amendments is respectfully requested. This Application contains claims 1-37 pending and under consideration. In view of the discussion below, it is believed that the application is allowable over the cited art. Consequently, reconsideration leading to allowance of all pending claims is requested.

Objections to the Specification

Objections were raised to the specification because on page 13, line 19, the number “840” should be changed to --340--. Applicants have submitted a correction. Support for the amendments can be found in the Application in the same paragraph on line 23. Consequently, it is believed that the amendment does not add new matter.

Additionally, on page 14, the paragraph on beginning on line 5 has been replaced. Support for the amendments to the reference numbers in that paragraph can be found in FIG. 14.

The amendments to pages 13 and 14 were originally submitted in Response to the Written Opinion for the counterpart PCT application. If these amendments have not been included in the present Application, which is the U.S. of that PCT application, it is requested that this amendment be entered now. It is believed that no new matter is introduced by this amendment.

Objections to Claims

Objections were raised to claims 28-38 as being misnumbered. The amendments to the claims have renumbered these claims as 27-37.

Claim Rejections under 35 USC §102

Claim 35 has been rejected under 35 USC §102(b) over Alexander (US 2,519,811). It is believed that Alexander does not disclose or make obvious the invention as claimed in claim 37. Claim 37 explicitly recites that the spacer tool comprise “an occlusion member extendable from said distal end of said housing for blocking an opening defined in the spacer when said spacer engager is engaged to the spacer, said occlusion member having a plate with an interior and exterior surface, at least one of said surfaces of said plate being curved.” Applicants believe that Alexander does not disclose or make obvious a spacer insertion tool as recited above. It was

noted in the Office Action that seating element 20 extends from sleeve member 17. It is respectfully suggested that the seating element is not configured to block an opening defined in a spacer. Rather, the seating member 20 is configured to grasp the underside of a screw head as illustrated in FIGS. 1 and 2. This is different from the presently claimed invention that includes extending an occlusion member from a housing to cover an opening in the side of an implant. The underside of a screw head is either a chamfered edge or a flat surface. Regardless, the underside of the screw head is not configured to include an opening as claimed and, consequently, the seating element 20 is not configured to block an opening defined in the spacer as recited in claim 35 for the occlusion member of the spacer insertion tool. Consequently, it is believed that the invention as claimed in claim 35 is patentably distinct from Alexander. Withdrawal of this rejection is respectfully requested.

Claim Rejections Under 35 USC §103

Claims 1-35 were rejected under 35 USC §103(a) over McIntyre (US 4,950,296) in view of Brosnahan, III (US 5,645,598). It is respectfully submitted that McIntyre does not disclose a body that defines two arms between a chamber as presently recited in claim 1. McIntyre and Brosnahan, III both disclose a bone dowel having a through hole extending perpendicular to the axis. Neither McIntyre nor Brosnahan, III describe or make obvious an implant that includes “a first arm and a second opposing arm, said arms defining an opening in communication with said chamber”.

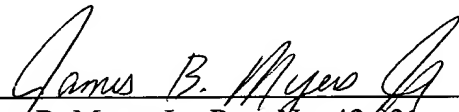
Neither the implants in McIntyre nor Brosnahan III include arms as recited in claim 1. An arm is defined as “d: a slender part of a structure, machine or an instrument projecting from the main part, access or fulcrum.” (emphasis added). *Miriam Webster's Collegiate Dictionary*, 10th Ed. The ends 14 and 16 of implant 12 illustrated in FIG. 2 of McIntyre are not arms but are, as noted, merely ends to the bone plug or dowel. Similarly, Brosnahan does not describe or disclose any arms. Consequently, Brosnahan does not rectify any of the deficiencies of McIntyre regarding the arms recited in the invention of claim 1.

It is respectfully submitted that neither McIntyre nor Brosnahan disclose or make obvious the claimed invention. Consequently, withdrawal of the rejection of claim 1, and claims 2-34 which depend from claim 1, is requested.

Conclusion

In view of the foregoing remarks, it is respectfully submitted that the cited references, either singly or in combination, do not disclose or make obvious the claimed invention. Accordingly, reconsideration leading to withdrawal of all the rejections under 35 USC §§102 (b) and 103(a) is requested. Additionally, the Examiner is invited to telephone the undersigned attorney if there are any questions about this submission or other matters which may be addressed in that fashion.

Respectfully submitted,

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